

BEFORE THE BOARD OF MILK CONTROL
AND THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PROPOSED AMENDMENT
ARM 32.23.301 pertaining to licensee)
assessments) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On March 4, 2016, the Board of Milk Control (board) and the Department of Livestock (department) propose to amend the above-stated rule.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on January 13, 2016, to advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-1929; e-mail: MDOLcomments@mt.gov.

3. The board proposes to amend the following rule as follows, new matter underlined, deleted matter interlined:

32.23.301 LICENSEE ASSESSMENTS (1) Pursuant to 81-23-202, MCA, the following assessments for the purpose of deriving funds to administer and enforce the Milk Control Act are levied upon the Milk Control Act licensees of this department.

(a) A fee of ~~\$0.08~~ \$0.07 per hundredweight, with no assessment for fees less than \$5.00 per month, on the total volume of all milk subject to the Milk Control Act produced and sold by a producer-distributor.

~~(b) A fee of \$0.08 per hundredweight, with no assessment for fees less than \$5.00 per month, on the total volume of all milk subject to the Milk Control Act sold in this state by a distributor home based in another state. Said fee is to be paid either by the foreign distributor or his jobber who imports such milk for sale within this state.~~

~~(c)~~(b) A fee of ~~\$0.04~~ \$0.035 per hundredweight, with no assessment for fees less than \$5.00 per month, on the total volume of all milk subject to the Milk Control Act sold by a producer.

~~(d)~~(c) A fee of ~~\$0.04~~ \$0.035 per hundredweight, with no assessment for fees less than \$5.00 per month, on the total volume of milk subject to the Milk Control Act sold by a distributor, excepting that which is sold to another distributor. If the distributor is foreign, the assessment must be paid either by the foreign distributor or by the import jobber.

(2) and (3) remain the same.

AUTH: 81-1-102, 81-23-104, 81-23-202, MCA
IMP: 81-1-102, 81-23-103, 81-23-202, MCA

REASON: The board proposes to amend the above-stated rule:

- to raise sufficient revenue to provide for the administration of Title 81, chapter 23, MCA, as proposed for Fiscal Year 2017;
- to establish a single assessment rate for distributors, consistent with 81-23-202(2)(c), MCA; and
- to ensure assessments are commensurate with the costs as required by 81-1-102(2), MCA, while maintaining a reasonable cash balance in the related special revenue fund to ensure solvency.

The 12.5% reduction in assessment rates potentially will affect approximately 132 businesses. The assessment is estimated to be reduced approximately \$74,000.

Under past practice, the Milk Control Bureau excluded butter, cream cheese, and cheese from the assessment. The definition of "milk" in 81-23-101(1)(h), MCA, does not exclude these products. Beginning in Fiscal Year 2017, the Milk Control Bureau will no longer exclude these products from the assessment. The assessment for butter, cream cheese, and cheese will affect approximately 68 businesses. The assessment is estimated to be approximately \$94,000.

The reduced assessment rate and the elimination of the assessment exclusion result in a cumulative assessment increase of approximately \$20,000.

4. The department intends to adopt the proposed amendment effective July 1, 2016.

5. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to the Executive Officer, Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., January 21, 2016.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m., January 21, 2016.

7. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a

public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 14, based upon there being approximately 132 businesses licensed by the Milk Control Bureau that are currently operating.

8. The board and Department of Livestock maintain lists of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Scott Mitchell
Scott Mitchell
Chair
Board of Milk Control

/s/ Martin Zaluski
Martin Zaluski
Executive Officer
Department of Livestock

/s/ Cinda Young-Eichenfels
Cinda Young-Eichenfels
Rule Reviewer

Certified to the Secretary of State December 14, 2015.